

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CRAIG GROSS,

:

PETITIONER,

:

: CIVIL ACTION NUMBER.

Vs.

:

:

1:07-cv-11298

UNITED STATES OF AMERICA, :

RESPONDENT. :

MEMO ENDORSED
p.4

APPEAL TO THE DISTRICT COURT
OF THE MAGISTRATE JUDGES DENIAL
OF REQUEST FOR F.R. CIV.P., RULE 15 MOTION

(1) On June 27, 2008, the Honorable James C. Francis, United States Magistrate Judge for the United States District Court, Southern District of New York, denied Petitioner's request to hold in abeyance the Title 28 United States Code, Section "2255 Motion" filed in this action on April 23, 2007.

(2) The Petitioners request to hold the 2255 Motion in abeyance was prompted by the Magistrate Judges' denial of a previously filed motion to supplement and/or amend the 2255 Motion.

(3) The District Court retains the jurisdiction to review all decisions of a Magistrate Judge.

(4) This Petitioner was sentenced on July 28, 2005 by the Honorable Judge Richard M. Berman. Thus, this Honorable Court retains the jurisdiction to issue all final rulings derived from Petitioners collateral attack of the conviction and sentence imposed by the Court.

FEDERAL RULES OF CIVIL PROCEDURES, RULE 15 SUPPLEMENTS AND AMENDMENTS

Although a Title 28 United States Code, Section 2255 filing is criminal in nature, it is a civil filing governed by the Federal Rules of Civil Procedures. A habeas petitioner, like any other civil litigant, is entitled to amend his or her petition. See **ZARVELA V. ARTUZ, 254 F. 3d 374, 382 (2d Cir. 2001)**. Petitioners request to amend his 2255 Motion pursuant to Federal Rules of Civil Procedures, Rule 15, was not a dilatory tactic or unfairly prejudicial to the Respondent. The request to amend was not

abusive and the Magistrate Judge should have freely granted Petitioners request. See **FROMAN V. DAVIS, 371 U.S. 178, 182, 83 S.Ct. 227, 9L.Ed 2 222 (1962).**

PETITIONERS NEED FOR ADDITIONAL TIME TO AMEND

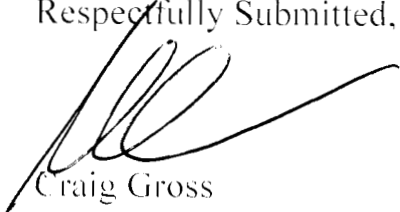
Petitioner will only be given one opportunity to file for collateral relief pursuant to Title 28 United States Code, Section 2255. Such a motion must contain all available defenses. As a pro-se litigant, Petitioner is not versed in how to research issues. As an incarcerated litigant, Petitioner has only limited access to the institutional law library. Moreover, permitting Rule 15 Amendments allows consideration of Petitioners claims on their merit. See **FAMA v. COMM'R OF CORR. SERVS., 235 F.3d 804, 808 (2d Cir. 2000).**

SUMMARY

Requesting an additional 60 days to Amend a filing that may only be brought once, is not unreasonable and/or prejudicial to the Respondent.

Therefore, Petitioner moves this Honorable Court to cause to issue an ORDER reversing the Magistrate Judge denial of permission to Amend the 2255 Motion pursuant to Federal Rules of Civil Procedures, Rule 15. Petitioner further moves this Honorable Court to grant a 60 day period from the date of the Courts ORDER to file an amended 2255 motion.

Respectfully Submitted,


Craig Gross

Reg. No. 54097-054

FCI Milan

PO Box 1000

Milan, MI 48160

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 8/7/08

<u>Government to respond</u>	
<u>by 8-11-08.</u>	
SO ORDERED: Date: 8-7-09	<u>Richard M. Berman</u> Richard M. Berman, U.S.DJ.

CERTIFICATE OF SERVICE

I, Craig Gross, do hereby certify that I have fulfilled the requirements of service by providing a true and correct copy of this filing to all parties to this action.

SIGNED _____

DATED _____